

## SUPPORT ASBESTOS “DOUBLE DIPPING” DISCLOSURE LEGISLATION

- Over 115 companies have been forced into bankruptcy due at least in part to asbestos-related liabilities, including virtually all major asbestos producers. In bankruptcy, these companies created trusts to pay for harms they caused. Over 60 trusts in operation today collectively hold some *\$37 billion* to pay claimants. The reorganized companies themselves are now immune from asbestos lawsuits.
- Plaintiffs can file claims with the asbestos trusts to recover for exposures related to the major asbestos producers and bring personal injury lawsuits against still-solvent, but increasingly remote defendants. Many of today's defendants used to be peripheral or are newer defendants, including small businesses.
  - In a case involving gasket and packing manufacturer Garlock Sealing Technologies, a typical mesothelioma plaintiff's total recovery was estimated to be \$1-1.5 million, including an average of \$600,000 from 22 trusts.
- By delaying asbestos trust filings until after a personal injury case is resolved, plaintiffs can suppress evidence of trust-related exposures that could be used to attach fault to a culpable bankrupt entity in the tort case or obtain set-offs for any trust payments to the plaintiff (leading to “double dipping”).
  - In a landmark *In re Garlock Sealing Technologies, LLC* case a federal bankruptcy judge described how Garlock became a target defendant after asbestos plaintiffs' lawyers bankrupted the major asbestos producers. Garlock's participation in the tort system became “infected by the manipulation of exposure evidence by plaintiffs and their lawyers.” Evidence Garlock needed to attribute plaintiffs' injuries to bankrupt companies “disappeared.” The judge said this occurrence was the result of an effort by plaintiffs and their lawyers to “withhold evidence of exposure to other asbestos products and to delay filing claims against bankrupt defendants' asbestos trusts until after obtaining recoveries from Garlock (and other viable defendants).”
  - An examination of over 1,800 mesothelioma lawsuits resolved by Crane Co. from 2007-2011 revealed that plaintiffs filed an average of 18 asbestos trust claims. On average, “80% of these claim forms or related exposures were not disclosed by plaintiffs or their law firms to Crane in the underlying tort proceedings.”
  - Other inconsistencies regarding exposure history statements made by asbestos plaintiffs in tort cases and in trust claims have been uncovered in individual cases and documented in several studies by the U.S. Chamber Institute for Legal Reform (ILR). In March 2017, additional examples of inconsistent claiming surfaced in federal Racketeer Influenced and Corrupt Organizations Act (RICO) litigation by asbestos defendant John Crane, Inc. against a major asbestos plaintiffs' personal injury firm with offices in Texas and California.
  - An April 2017 sample of 100 asbestos cases filed in Illinois revealed that only 8 disclosed having made trust claim submissions, though, on average, plaintiffs in the sample could have made 16 trust claims, and 37 plaintiffs could have made more than 20 trust claims, showing that claims are being delayed intentionally.
- The bill requires plaintiffs to file and disclose available asbestos trust claims before trial.
  - *Promotes honesty in trust claiming and civil litigation* by policing the potential for plaintiffs to give inconsistent exposure histories in court and in trust claims.
  - *Preserves tort defendant and trust fund assets against fraud so that deserving claimants get paid.*
  - *Juries would be more fully informed of all of a plaintiff's exposures to asbestos* to properly decide liability.
  - *Addresses “double dipping,”* where a solvent defendant pays what the jury believes is needed to make the plaintiff whole, but then the plaintiff files trust claims after trial and obtains more money for the same harm.
  - *Speeds payments to claimants* by ensuring that asbestos trust claims are filed sooner, thus resulting in faster trust payments to sick plaintiffs. Makes asbestos civil litigation more efficient by streamlining discovery.
- Trust claims now routinely submitted after trial would simply have to be filed before trial. Claimants would not experience delays if timely disclosures are made. A May 2017 U.S. Chamber ILR report found that Ohio's 2013 trust transparency law has not imposed significant burdens on plaintiffs. Wrongdoers remain fully accountable.
- 12 states—Texas, Ohio, Wisconsin, Iowa, Tennessee, Utah, West Virginia, Arizona, North Dakota, South Dakota, Oklahoma, and Mississippi—have enacted similar asbestos trust claim disclosure laws. The National Conference of Insurance Legislators (NCOIL) adopted similar model legislation in July 2017.
- The American Legion and Veterans of Foreign Wars (NY) among other veterans' groups have supported trust disclosure reforms. The lead sponsor on the Arizona law was a former U.S. Marine Corps Gunnery Sergeant.

## Michigan Should Pass Asbestos Litigation Transparency Legislation

- **What are Asbestos Bankruptcy Trusts?** Sixty bankrupt companies have created personal injury trusts to compensate present and future claimants for alleged asbestos-related injuries. Nearly all of the companies most responsible for these injuries—the miners and manufacturers of asbestos—have established trusts. Collectively, the asbestos trusts manage in excess of \$36 billion, and they distribute billions of dollars to hundreds of thousands of claimants every year. The trusts paid \$3 billion to over 460,000 claimants in 2010 alone.
- **The Fraud Problem:** Individuals who file (or could file) claims with asbestos trusts routinely sue solvent companies. This dual compensation system promotes fraudulent and inconsistent claims. Last year, a federal court in North Carolina concluded that plaintiffs' attorneys are withholding and manipulating information on their clients' trust claims in order to increase tort settlements.
- **The Fairness Problem:** By filing trust claims after lawsuits have concluded and otherwise hindering access to the exposure information presented to trusts, the plaintiffs' bar is denying businesses an opportunity to fully and fairly defend themselves in court.
- **The Double Dipping Problem:** By filing with trusts after resolving their tort suits, claimants are able to "double dip" by receiving a full recovery in the tort system as well as trust payments. This is unfair to solvent defendants, who end up paying more than their fair share of liability. It is also unfair to future victims. "Double dipping" draws down asbestos trusts' funds and endangers future victims' trust recoveries.
- **The Impact on Michigan Businesses:** The current lack of trust transparency hurts Michigan companies, their employees, their shareholders, and the communities in which they operate. Every time a company is forced to pay more than its fair share in an asbestos case, it's left with less to invest in its future—and in Michigan's economy.
- **The Solution:** Michigan should enact Asbestos Litigation Transparency Legislation. This common sense legislation would require plaintiffs in asbestos suits to file their trust claims before proceeding to trial. This simple change would discourage fraud and prevent abusive "double dipping." Similar laws have been passed in West Virginia, Arizona, Ohio, Oklahoma, Tennessee, Utah and Wisconsin.

## **Michigan Asbestos Trust Claims Transparency**

- Over 100 businesses have been forced into bankruptcy in large part due to asbestos-related litigation. Through the bankruptcy process, these companies created trusts that now hold roughly \$25 *billion* to pay claimants and are now immune from lawsuits. This has forced plaintiffs to search for peripheral defendants to sue that often includes small businesses.
- Currently Plaintiffs can file claims with bankrupt entities and still pursue other businesses through the court system, allowing them to recover from both sources. This leads to “double-dipping” where plaintiffs can claim exposure to asbestos in the bankruptcy trusts and not disclose them during the civil lawsuit, causing a lack of transparency and fairness.
- As a result of this legislation, claims normally submitted after trial by plaintiffs and hidden from defendants would have to be filed before trial, leading to an open and transparent process. Claimants would not experience delays in their case as long as the attorneys make timely disclosures. 12 states currently have similar disclosure laws. A May 2017 report by the US Chamber found Ohio’s transparency law has not imposed delays or significant burdens on plaintiffs.
- Under this legislation wrongdoers will pay their fair share but will not pay inflated monies that will be needed to pay future claimants.

# State Laws Governing Bankruptcy Trust Claim Transparency

